

M e m o r a n d u m**245.0722**

To: Mr. Dennis Fox, Supervisor
Audit Evaluation & Planning Section
(MIC:40)

Date: October 27, 1994

From: John L. Waid
Tax Counsel

Subject: SY --- XX-XXXXXX
Medicinal Herbs

Assistant Chief Counsel Gary J. Jugum has requested that I answer your memorandum to him dated September 1, 1994. You asked him to review a draft of a letter which Mr. Robert Roos, from the Union City Branch Office, proposes to write to the taxpayer in response to its request for an opinion regarding the taxability of its sales of certain herbal teas.

The teas, distributed by T--- M---, Inc., are called S--- M---, T--- C---, G--- C--- C---, P--- Tea, B--- E---, and N--- N---. Mr. Roos concluded that all of the products, except for N--- N---, make specific medicinal claims and so are excluded from the definition of "food products" under Regulation 1602(a)(4). He concluded, however, that N--- N--- makes no such specific medicinal claims and so appeared to be an herbal beverage exempt from tax as a food product. You are of the opinion that his conclusion regarding N--- N--- is incorrect.

You attached to your memorandum the memorandum which Oakland District Principal Auditor Orval D. Millette sent to the Principal Tax Auditor, dated August 16, 19XX, which contained a copy of the taxpayer's request, to which was attached the product labels, miscellaneous correspondence with the taxpayer, and a copy of Mr. Roos' draft.

OPINION

Regulation 1602(a)(4) excludes "medicines" from the term "food products." As you note, we have previously concluded that herb teas the packaging or labelling of which make specific medicinal claims are medicines. (Annots. 245.0500, 245.1091, & 245.1350.) We have also said that general claims about feeling better, etc., do not qualify as specific medicinal claims.

Such letters were written, however, regarding taxpayers who sold herbal products generally. The distributor here is T--- M---, which calls itself on the packaging "A---'s M--- H--- Company." The various products are thus already labelled medicines. We have reviewed the package copies you sent and agree that each, except the one for N--- N---, claims specific medicinal properties for the product and therefore is clearly a medicine excluded from the definition of food products under Regulation 1602(a)(4).

N--- N--- makes no specific "this-will-put-you-to-sleep" claim. As you note in your memorandum, T--- M--- labels itself an herbal medicine company, and each package has the following legend:

"Since the beginning of time, herbs have played an important role in the development of medicine. Long before their use as beverage teas, herbs were used in the treatment of illness. In fact, up until the turn of the century, herbs still provided the basic ingredients for most medicines. With the development of drug chemistry, many of the simple ways of traditional medicine were left behind."

N--- N--- calls itself "--- --- --- --- --- - --- ---."

We agree with your conclusion that N--- N--- is labelled as an herbal medicine even though the package does not say what it does for the drinker in specific terms. In this case we do not need the specificity that we usually require regarding distinct medical qualities since the N--- N--- package is amply labelled as an herbal medicine generally as indeed are all the other products at issue. We thus conclude that N--- N--- and the other herbal teas listed above are herbal medicine teas excluded from the definition of "food products" under Regulation 1602(a)(4) with the result that their sales are subject to tax.

JLW:cl

cc: Oakland District Administrator